

# **REPORT OF THE COMMITTEE ON PUBLIC SAFETY AND ECONOMIC DEVELOPMENT**

Voting Members:

Carol Fukunaga, Chair; Kymberly Marcos Pine, Vice-Chair  
Ikaika Anderson, Stanley Chang, Breene Harimoto

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Committee Meeting Held  
April 22, 2014

Honorable Ernest Y. Martin  
Chair, City Council  
City and County of Honolulu

Mr. Chair:

Your Committee on Public Safety and Economic Development, which considered Bill 30 (2014) entitled:

“A BILL FOR AN ORDINANCE RELATING TO SIMULATED GAMBLING DEVICES,”

which passed First Reading at the April 16, 2014 Council meeting, reports as follows:

The purpose of this Bill is to regulate simulated gambling devices.

A representative of the Honolulu Police Department (HPD), the executive director of the Hawaii Restaurant Association, and an individual commented on the Bill. A representative from the Hawaii Coalition Against Legalized Gambling and an individual supported the Bill. The Hawaii Catholic Conference and an individual submitted testimony in favor of the Bill. The managing member of PJY Enterprises, LLC., opposed the Bill.

The HPD representative voiced concerns with the Bill, explaining that the HPD was currently working with the Department of the Corporation Counsel (COR) and the Department of the Prosecuting Attorney on recommended amendments to the Bill. A deputy corporation counsel explained it is COR's position that these simulated gambling devices are illegal gambling devices.

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## **CITY COUNCIL**

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON **MAY 7 2014**

COMMITTEE REPORT NO. **97**

# REPORT OF THE COMMITTEE ON PUBLIC SAFETY AND ECONOMIC DEVELOPMENT

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Page 2

The managing member of PJY Enterprises, LLC, opposed the Bill, noting that a court case, including allegations of illegal search and seizure of these machines, is scheduled to begin in late May.

The executive director of the Hawaii Restaurant Association, concerned over the Bill's possible negative impact on marketing and publicity efforts, requested language changes to the Bill to ensure that its members would be able to continue their legitimate commercial promotions.

Upon further consideration, both respecting the pending litigation and the need for adequate public review, your Committee agreed to report the Bill out of Committee unamended, with the caveat that a proposed FD1 would be prepared and available for public review by being posted on the City Council's May 7<sup>th</sup> meeting agenda.

Your Committee on Public Safety and Economic Development is in accord with the intent and purpose of Bill 30 (2014) and recommends that it pass Second Reading, be scheduled for a public hearing, and thereafter be referred back to Committee. (Ayes: Fukunaga, Chang, Harimoto, Pine – 4; Ayes with reservations: Anderson – 1; Noes: None)

Respectfully submitted,

  
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Committee Chair

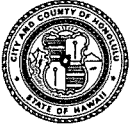
At the 5/7/14 Council meeting, Bill 30 was amended and passed second reading in the form attached as Bill 30, FD1.

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON MAY 7 2014

COMMITTEE REPORT NO. 97



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## A BILL FOR AN ORDINANCE

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RELATING TO SIMULATED GAMBLING DEVICES.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and Findings. The purpose of this ordinance is to regulate simulated gambling devices.

The Council finds and declares that existing state law broadly prohibits gambling and gambling devices throughout the State of Hawaii. However, the City and County of Honolulu has recently experienced a proliferation of establishments offering, for commercial gain, the use of computers or video displays or other simulations of games ordinarily played in a casino or otherwise in connection with gambling that show the results of raffles, sweepstakes, contests or other promotions (referred to in this section as "simulated gambling devices").

These establishments hold themselves out as arcades or other places of entertainment and assert that the simulated gambling devices are not illegal under state law. However, simulated gambling devices may encourage behavior similar to gambling in members of the public who play these simulated gambling devices, including the elderly and the economically disadvantaged.

The Council finds that establishments offering use of simulated gambling devices are adverse to the quality of life and adverse to the health, safety and welfare of the residents of the city, including those most vulnerable within the community.

The Council believes that a local prohibition on simulated gambling devices would close any alleged loopholes that may exist under state law and would enable local law enforcement to consistently enforce state and city laws that safeguard the public's health, safety and welfare.

In order to ensure the uniform enforcement of existing laws, and to preserve the public peace and the health, safety and welfare of the residents of the city, the Council finds it necessary and advisable to prohibit the use of simulated gambling devices.



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## A BILL FOR AN ORDINANCE

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SECTION 2. Chapter 40, Revised Ordinances of Honolulu 1990 ("PROHIBITED ACTIVITIES IN THE CITY"), is amended by adding a new article to be appropriately designated by the revisor of ordinances and to read as follows:

**"Article \_\_\_\_ . Simulated Gambling Devices**

**Sec. 40-\_\_\_.1 Definitions.**

As used in this article:

"Person" means an individual, association, partnership, joint venture, corporation, or any other type of organization, whether conducted for profit or not for profit, or a director, executive, officer or manager of an association, partnership, joint venture, corporation or other organization.

"Simulated gambling device" means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee. The following rules of construction apply to this definition of "simulated gambling device":

- (1) The term "device" means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games from a central server system, machine, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device.
- (2) The term "upon connection with" means insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting an object to a device, including by the manual input by any person of characters, numbers, or any combination thereof, or other code for the purpose of accessing or activating a device, or any other mechanism or method by which the object provides access to the device.
- (3) The term "object" means a coin, bill, ticket, token, card, characters, numbers, or any combination thereof, other code, or any other tangible or intangible access mechanism or method, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.



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## A BILL FOR AN ORDINANCE

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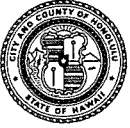
- (4) The terms "play or operate" or "play or operation" includes the use of skill, the application of the element of chance, or both.
- (5) The term "computer simulation" includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.
- (6) The term "game" includes slot machines, poker, bingo, craps, keno, any other type of game ordinarily played in a casino, a game involving the display of results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, and any other game associated with gambling or that could be associated with gambling, but the term "game" does not necessarily imply gambling as that term may be defined elsewhere.
- (7) The term "payoff" means cash, monetary or other credit, billets, tickets, tokens, or electronic credits that may be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the device or manually.
- (8) The use of the word "gambling" in the term "simulated gambling device" is for convenience of reference only. The term "simulated gambling device" as used in this article is defined exclusively by this section and does not incorporate or imply any other legal definition or requirement applicable to gambling that may be found elsewhere.

### **Sec. 40-\_\_\_.2 Simulated gambling devices prohibited.**

It is unlawful for any person to manage, supervise, maintain, provide, produce, possess or use one or more simulated gambling devices. Each individual act to manage, supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a separate violation of this section.

### **Sec. 40-\_\_\_.3 Exemption.**

This article does not prohibit an individual's personal, recreational, and non-commercial ownership, possession, play, operation or use of a device that could be construed to be a simulated gambling device; provided such ownership, possession, play, operation or use is not otherwise prohibited by state law; and provided further that ownership, possession, play, operation, or use does not constitute a lottery under HRS Sections 712-1220 and 712-1229.



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## A BILL FOR AN ORDINANCE

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**Sec. 40-\_\_\_.4 Conflict with state law.**

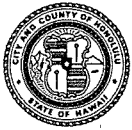
Nothing in this article is intended to conflict with the provisions of state law concerning gambling, gambling devices or lotteries. In the event of direct and express conflict between this article and state law, the provisions of state law control.

**Sec. 40-\_\_\_.5 Violations and enforcement.**

- (a) A violation of this article is a petty misdemeanor subject to a fine of up to \$1,000, up to 30 days of imprisonment, or both.
- (b) Police officers or any other law enforcement officer may enforce the provisions of this article.
- (c) Any simulated gambling device possessed or used in violation of this article, and any money or proceeds acquired in connection with a simulated gambling device in violation of this article, may be ordered forfeited to the state, subject to the requirements of HRS Chapter 712A.
- (d) Nothing contained in this article prevents the city from taking such other legal action in law or equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this article, including but not limited to pursuit of injunctive and declaratory relief in a court of competent jurisdiction.

**Sec. 40-\_\_\_.6 Severability.**

If any provision in this article is for any reason held illegal, invalid or inoperable, in whole or in part, by any court of competent jurisdiction, the remaining provisions or portions thereof remain in full force and effect."



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 30 (2014), FD1

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**A BILL FOR AN ORDINANCE**

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SECTION 3. This ordinance takes effect upon its approval.

INTRODUCED BY:

Joey Manahan

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DATE OF INTRODUCTION:

April 1, 2014  
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu